Office des transports du Canada
Canadian Transportation Agency

Air Passenger Protection Regulations Consultations: What We Heard

Canada

Air Passenger Protection Regulations Consultations: What We Heard

Table of Contents

Introduction 2
Consultation Overview 3
Key Themes 4
Airline's Obligation to Communicate Clearly 6
Flight Delays and Cancellations 8
Denied Boarding 15
Lost or Damaged Baggage 18
Tarmac Delays 20
Seating of Children under the Age of 14 Years 23
Transportation of Musical Instruments 25
Scope of New Regulations 26
Application of New Regulations when Different Airlines are Involved 27
Complaints and Enforcement 29
Tariff Topics, Availability and Filing 30
Next steps 32

Introduction

In May 2016, the Canadian Transportation Agency (CTA) launched its four-phase Regulatory Modernization Initiative (RMI) to ensure the regulations it administers keep pace with changes in business models, user expectations and best practices in the regulatory field.

Phase 3 of the RMI is the development of air passenger protection regulations. The *Transportation Modernization Act*, which came into force on May 23, 2018, amended the *Canada Transportation Act* (Act) to mandate the CTA to make regulations defining airlines' minimum obligations to passengers with respect to:

- the communication of passengers' rights and recourse options;
- flight delays and cancellations;
- denied boarding;
- tarmac delays of three hours or more;
- lost or damaged baggage;
- the seating of children under the age of 14 years; and
- the development of terms and conditions on the transportation of musical instruments.

The new air passenger protection regulations will ensure that air passenger rights are clear, fair, consistent and transparent. The law gives the CTA the authority to make the regulations in relation to flights to, from and within Canada, including connecting flights. Other consumer-related measures may also be included in this regulation.

This report provides a high-level summary of the input on the air passenger protection regulations received during consultations held from May 28, 2018 to August 28, 2018. The CTA is considering all that input as it develops the regulations.

The CTA will also consider best practices and lessons learned from air passenger protection regimes in other jurisdictions, including the European Union (EU) and the United States of America (US), as well as the Montreal Convention[1], an international treaty to which Canada is party (along with the US and the EU). The Montreal Convention is incorporated into Canadian law through the *Carriage by Air Act*. It establishes, among other things, liability limits payable by airlines in the case of passenger delay, lost, damaged or delayed baggage, when these events happen during international air travel.

---

[1] Convention for the Unification of Certain Rules for International Carriage by Air (Montreal Convention)

Consultation Overview

The purpose of the consultations was to engage with individual travellers, consumer advocacy groups and air industry representatives in order to inform the development of the new air passenger protection regulations.

The consultation process provided multiple channels for input and resulted in extensive engagement by Canadians and stakeholders:

- **Dedicated website:** The Air Passenger Protection website included a discussion paper, questionnaire and platform to upload comments. There were 30,874 web visits, 4,923 completed online questionnaires and 463 comments submitted online.
- **In-person and call-in sessions:** In-person consultations took place in 8 cities across Canada (Toronto, Winnipeg, Vancouver, Calgary, Yellowknife, Halifax, Montréal and Ottawa). 203 members of the public registered for these sessions.
- **Airport surveys:** 930 randomly-selected travellers took part in airport surveys held in 11 Canadian airports.
- **Stakeholder meetings:** 39 bilateral consultation meetings took place with consumer advocacy groups, airlines and industry associations, EU and US officials, and experts.
- **Written submissions:** 104 formal written submissions were received from consumer advocacy groups, airlines and industry associations, and other interested stakeholders.

Key Themes

PUBLIC

There is general consensus among individual travellers that:

- **Clear, concise, accurate and regular communication** from airlines is important to ensure that passengers know their rights at various stages of the travel process, particularly when issues arise.
- **Compensation** should be fair, reflect losses and inconvenience and deter the practice of overbooking.
- **Tarmac delays** beyond three hours should not be permitted, and airlines should be required to provide necessities such as food, water, lavatories and proper ventilation before three hours.
- **Children under 14** should be seated near their parent or guardian at no extra charge; proximity should be age-dependent.
- **Complaints processes should** be simple, clear and consistent and there should be penalties for airline non-compliance.
- The regulations should be developed taking into account the **accessibility-related needs** of persons with disabilities.

CONSUMER ADVOCATES

Consumer advocates generally agree that:

- Airlines' obligations should **be equivalent to or exceed requirements in other jurisdictions** (e.g., EU, US) and not conflict with the Montreal Convention.
- **Communication** of passenger rights must be done in simple, concise and clear language.
- **Compensation** should reflect the length of flight delay, with cash as the primary payment form.
- Non-compliance must be addressed through clear, simple, fair and effective **complaint and enforcement mechanisms.**

AIR INDUSTRY

The following are key views and comments generally raised by airlines and their representatives:

- Airlines are only **one of many players** impacting flights (others include airport authorities, security, customs, air navigation services, extraordinary circumstances). The regulations should reflect this complex system and not solely penalize airlines for disruptions attributable to other or multiple factors.

- **The scope and application** of regulations should not be extraterritorial and should recognize the exclusivity of the Montreal Convention for international travel.
- The regime should **not hinder the ability of airlines to innovate, compete and distinguish themselves** in the marketplace.
- Potential unintended consequences of prescriptive regulations, including flow-through costs to passengers, should be considered.
- Application of the new regime to all types of airlines would ensure consistency but could reduce the viability of small, low-cost and northern and remote airlines.
- Airlines should be given sufficient lead time to make the necessary adjustments to their IT systems, training, and processes before having to comply with the new regulations.

ACCESSIBILITY

As part of these consultations, the CTA received valuable input regarding accessibility for persons with disabilities. Comments and recommendations within the scope of the air passenger protection regulations (e.g., regarding communication with passengers) will be considered in the development of these regulations.

Input regarding issues that are outside the scope of these regulations (e.g., the handling of mobility devices, aircraft configuration, staff training, and airport infrastructure and services) is being considered as the CTA develops new accessible transportation regulations, which were the focus of the first phase of the RMI.

Airline's Obligation to Communicate Clearly

LEGISLATIVE MANDATE

The CTA is mandated to make regulations respecting airlines' "obligation to make terms and conditions of carriage and information regarding any recourse available against the airline, as specified in the regulations, readily available to passengers in language that is simple, clear and concise".

EU AND US RULES

The EU and US have requirements to notify passengers of their rights in specific circumstances. For example, the EU requires that airlines provide information concerning passenger rights in the event of flight cancellation, delay, or denied boarding at check-in at the airport desk, on airport kiosks, and on-line in a clearly visible manner and in as many relevant languages as possible. The airline must also provide written notice of the rules for compensation and assistance to passengers directly affected by a flight cancellation, delay, or denied boarding.

US rules require that airlines provide passengers with information, for example, on denied boarding compensation obligations, customer service plans, tarmac delay contingency plans and other matters.

PUBLIC VIEWS

The public feels strongly that passengers should receive information regarding terms and conditions of carriage and passenger rights and recourse in plain, accurate and concise language so that passenger rights can be understood quickly and easily. Survey respondents, for example, indicated that receiving information about the airline's obligations is considered *very important* (on a scale of 1-5, the average survey response was 5).

This information, travellers say, should be provided before a passenger purchases a ticket and through a variety of avenues at different stages of travel.

- Generally, survey respondents prefer to receive information about airline obligations through documents issued by the airline, via email, at the time of reservation and as soon as they encounter a problem.
- Information should also be shared on airline websites and where there is most likely going to be friction during the travel process (e.g. customer service, baggage areas, at the gate, on the aircraft).
- Information should be accessible to persons with disabilities, in French and Indigenous languages and through non-electronic means (for those travelling without a cellular phone or computer).

It is generally agreed that in the event of a flight disruption:

- Passengers should be told the reason as soon as it is known and be provided with regular and meaningful status updates based on the best available information.
- Airlines should proactively inform passengers of their rights and recourse in relation to the disruption.

CONSUMER ADVOCATE VIEWS

The importance of clear, regular and accurate communication to passengers is emphasized by consumer advocacy groups.

In addition to the methods noted above, consumer advocates suggest that information be shared through:

- plain language brochures, and fact sheets at the time of check-in;
- help counters at the airport;
- alternative communication tools for persons with disabilities and special needs; including, but not limited to: braille, and modern technology such as screen readers, screen magnifying software and assistive listening devices; and
- non-text formats such as information videos and infographics.

To ensure that all Canadians can easily understand their rights, consumer advocates express that information must be thorough and accurate, but in language that simple, clear and concise.

- The regulations should give directions on format and length of information shared by airlines.
- Key information about passenger rights and recourse should be centralized and the CTA, as regulator, should design a plain-language summary of rights.

It is generally felt that, during a flight disruption, passengers must be informed of the cause as soon as possible, and that regular updates (e.g., every 30 minutes) reflecting best available information should be given to passengers.

AIR INDUSTRY VIEWS

Airlines agree that passengers should have access to clear and concise information on their rights and responsibilities, and many underscored their ongoing commitment to improve communication with passengers, both in general and during delays.

- Information should be provided by means that are most accessible for passengers. Airlines are increasingly shifting towards electronic communication (preference for text messages, emails and app notifications).
- However, airlines serving northern and remote locations indicate that their communication options are more limited due to reduced availability and reliability of wireless communication.
- Regulations should not be overly prescriptive and allow airlines to innovate and embrace new communications technologies in the future.
- It can be difficult to communicate directly with passengers who have booked a flight through third-parties such as travel agents, as passenger contact information is not necessarily shared with airlines.
- Requirements to post information at airports are recommended against, as it is agreed that airport operators oversee airport facilities and signage and that airlines have limited control over the signage in common use airport spaces.
- Some raise concern that there would be significant IT system complexity and cost associated with requiring additional information to be included on e-tickets, boarding passes, itineraries and in-flight entertainment systems.

In the event of a delay or cancellation, airlines generally support providing passengers with reasons for a delay, when that information is available. Some indicate that, due to the complexity of flight operations and aircraft mechanics, it can be difficult to immediately pinpoint the cause of a delay.

Flight Delays and Cancellations

LEGISLATIVE MANDATE

The CTA is mandated to make regulations setting out the airline's minimum obligations when a flight is delayed or cancelled, including:

- the minimum standards of treatment of passengers that the airline is required to meet and the minimum compensation the airline is required to pay for inconvenience when the delay, cancellation or denial of boarding is within the airline's control;
- the minimum standards of treatment of passengers that the airline is required to meet when the delay, cancellation or denial of boarding is within the airline's control, but is required for safety purposes, including in situations of mechanical malfunctions;
- the airline's obligation to ensure that passengers complete their itinerary when the delay, cancellation or denial of boarding is due to situations outside the airline's control, such as natural phenomena and security events; and

- the airline's obligation to provide timely information and assistance to passengers.

EU AND US RULES

The EU has established a detailed set of requirements for airlines in situations of flight delays or cancellations. These requirements include providing passengers with information, refreshments, accommodation, reimbursement and re-routing. Airlines must also pay compensation for delays of three hours or more—when those delays are not the result of extraordinary circumstances and when claims are submitted by passengers—in the amounts of:

a. EUR 250 (approx. CAN$378) for all flights of 1500 kilometres or less;

b. EUR 400 (approx. CAN$605) for all intra-Community flights of more than 1500 kilometres, and for all other flights between 1500 and 3500 kilometres;

c. EUR 600 (approx. CAN$907) for all flights not falling under (a) or (b).

In the US, there are no requirements for what an airline must provide delayed passengers in terms of refreshments, information, etc. Airlines are not required to provide minimum compensation to passengers for flights that have been delayed or cancelled.

MONTREAL CONVENTION PROVISIONS

For international travel, the Montreal Convention establishes that airlines are liable to cover a passenger's damages related to delay, up to a maximum of 4,694 Special Drawing Rights (approximately CAN$8,512), unless it can be proved that the airline and its servants and agents took all reasonable measures to avoid the damage, or it was impossible to take such measures.

Input from the public, consumer advocates and air industry is described below under three key topics—definitions, standards of treatment and compensation.

Definitions

Definitions will help identify into which of the three categories established by Parliament a flight disruption falls—fully within the control of the airline, within the control of the airline but required for safety reasons, or out of the airline's control. These are important to all parties, as this categorization will determine what standards of treatments and compensation, if any, must be provided by the airline.

PUBLIC VIEWS

Travellers think that:

- The parameters must be clear enough to ensure that the categories not requiring compensation from airlines (i.e., situations outside airline control and those required for safety) do not inadvertently capture items for which airlines are, in fact, fully responsible.
- Because airlines are responsible for the maintenance of their aircraft, they should be required to pay compensation for mechanical issues that could have been foreseen or prevented.
- Factors outside the airline's control, particularly weather, should only be considered the cause of a delay if they directly impact the operation of a particular flight. In other words, downstream or "domino" effects of a delay should be considered within airline control.
- There should be safeguards and monitoring to ensure that accurate reasons for delay are being provided by airlines.

CONSUMER ADVOCATE VIEWS

Consumer advocates express concern that overly broad definitions do not provide necessary clarity and could allow airlines to categorize too many situations as wholly beyond their control or as being due to safety considerations. Many recommend:

- Basing the definition of "situations outside the airline's control" on the UK Civil Aviation Authority's list of extraordinary circumstances, with certain updates and adjustments.
- Defining "situations within an airline's control but required for safety" narrowly (to reflect, for example, that not all mechanical malfunctions compromise safety, and to exclude regular maintenance activities and other factors linked to airline planning).

AIR INDUSTRY VIEWS

Airlines want to ensure that the definitions accurately reflect factors for which they are directly responsible, as they are only one of many parts of the air industry "ecosystem" that may play a role in a delay or cancellation. They believe definitions should:

- Be clear and precise, in order to avoid interpretation having to be made by courts (as has happened in the EU).
- Be based in core principles, but also include a detailed but non-exhaustive list of situations considered outside airlines' control.
- Reflect the level of control an airline has over each event. For example, airlines should not be held responsible for delays attributable to other parties, issues that could not have been mitigated, or downstream impacts of extraordinary circumstances.

- Reflect that not all mechanical malfunctions can be foreseen or prevented through regular maintenance (e.g., defects in mechanical parts). Such malfunctions should not be viewed as being within the airline's control.
- In no way create pressure on crew to make decisions to avoid delays at the expense of safety.

Standards of Treatment

The CTA is mandated to make regulations with respect to minimum standards of treatment when a flight disruption is fully within the control of an airline or within its control but required for safety reasons.

PUBLIC VIEWS

Travellers think that:

- The standards of treatment should include food and drink, status updates, free access to communication and overnight accommodations, if required.
- Airlines should be required to ensure that passengers complete their itinerary for all types of delays, by rebooking passengers in comparable conditions (i.e. same class of service) and, if necessary, on other airlines.
- There should be rebooking priorities (e.g., unaccompanied minors, persons with disabilities etc.).
- Passengers should be returned to their point of origin if travel is no longer necessary due to the delay.
- A schedule change by an airline—potentially not presented in the same way as a delay—should be treated in the same way as a flight delay, with the same standards of treatment.

CONSUMER ADVOCATE VIEWS

Consumer advocates generally agree that the standards of treatment should include food and drink, access to communication, accommodation in certain cases and rebooking, and should be applied in relation to the length of delay. They state that:

- Meals should be offered at regular intervals (e.g., every 4 hours), or in reasonable relation to the length of delay (as in the EU).
- Hotel accommodation should be provided for delays of more than 8 hours or those extending into the following day.
- Ground transportation should be provided to accommodation free of charge.
- The above assistance could be provided through vouchers of set amounts or by allowing passengers to incur reasonable expenses on their own and submit these to the airline for reimbursement.

- Passengers experiencing a lengthy delay should be rebooked to their destination or to their point of origin.

AIR INDUSTRY VIEWS

There is some variability in airlines' views regarding the specific standards of treatment to which passengers should be entitled in the event of a delay and when those requirements should start:

- *Communication:* Some airlines were of the view that passengers should be provided means to communicate during a delay (e.g., free Wi-Fi or calling cards), while others feels that this is unnecessary, as most passengers travel with their own communication devices.
- *Food and drink:* After a delay of a certain length of time (e.g., 3 or 4 hours), airlines should be required to provide meals to passengers. Some airlines proposed setting meal voucher values, while others recommended against this, as this would not take into account the significant cost variance between different airport locations.
- *Accommodation:* For overnight delays, the majority of airlines agreed that passengers should be provided with the necessary amenities, which could include hotel accommodation, and ground transportation to accommodation. Some feel that this should not apply to locally-based travellers, as these individuals could simply return to their homes.

Most, but not all airlines agree that they should be required to ensure passengers ultimately complete their itinerary if there is a flight delay or cancellation. However, they also emphasize that rebooking is a time-consuming process, as it must be tailored to each passenger's itinerary. They say that:

- Airlines should be given sufficient time to recover from the delay and resume the flight before being required to refund or rebook.
- It would be unduly punitive to require airlines to rebook passengers with another airline—particularly for airlines without extensive commercial or partnership arrangements with other airlines. An airline should at least be given a reasonable amount of time to rebook on their own aircraft before having to consider other airlines' services.

There are differing views among airlines regarding the reasonableness of requiring airlines to return passengers to their point of origin in the event a passenger no longer wishes to complete their trip.

Airlines serving northern and remote regions, while supportive of offering minimum standards of treatment to delayed passengers, express concern regarding their ability to

comply with certain types of requirements, due to their unique operating conditions, including:

- a lack of hotels and restaurants within the immediate vicinity of certain airports; and
- the infrequency of flights and specialized nature of aircraft serving remote airports, which affect airlines' ability to rebook in a timely manner.

Minimum Levels of Compensation

The CTA is mandated to make regulations with respect to minimum compensation for flight delays or cancellations that are within the control of an airline and not required for safety reasons.

PUBLIC VIEWS

Travellers believe compensation for delays and cancellations should be fair and reflect inconvenience and losses, including the passenger's time. Suggestions as to levels of compensation vary and include the following:

- compensation levels comparable to those of the EU regime;
- lump sum payments based on the length of the delay; and
- compensation for an individual's expenses and/or damages.

Survey respondents proposed compensation levels between $0 and $9000, depending on the duration of the delay.

Survey respondents say that it is important to be offered cash, complementary tickets and travel vouchers as forms of compensation. The vast majority felt that it would be reasonable for airlines to offer the choice between cash and compensation in other forms.

CONSUMER ADVOCATE VIEWS

Consumer advocates think compensation levels should be fair and reflective of losses incurred (including passengers' time) and that minimum compensation pursuant to the air passenger protection regulations should be in addition to any amounts payable under the Montreal Convention, where applicable. Their suggestions for minimum compensation levels include:

- compensation comparable to the those of the EU regime;
- set amounts based on length of delay (ranging from $500 to $2,000, depending on the length of delay);

- compensation based on both flight distance and length of delay; and
- set amounts plus additional compensation that reflects a passenger's expenses, inconvenience and/or damages.

According to consumer advocates, the primary form of compensation should be cash or equivalent (credit card refunds, e-transfers, cheque). It is also suggested that if an airline offers other forms of compensation (e.g., vouchers), the passenger must be made aware of the value of cash compensation available; the value of the alternative compensation should be greater; and there should be no expiry date associated with the alternative compensation.

Some consumer groups indicate there should be a positive duty for airline to provide minimum compensation in order to ensure that all passengers receive equal treatment; others maintain that compensation should only be paid to passengers who have submitted a claim in order to achieve consumer protection without undue economic impact on airlines. Some advocates believe that third parties should be allowed to advocate and submit claims on behalf of affected passengers.

AIR INDUSTRY VIEWS

Some airlines raised concerns that prescribing minimum compensation for inconvenience in relation to delays during international air travel would be contrary to the Montreal Convention's exclusive scheme. Airlines generally believe that minimum compensation levels should be proportional, balanced and non-punitive in nature. Some argue that passengers accept a certain inherent risk of delay when choosing to travel by air.

A range of principles for setting minimum compensation are suggested by airlines:

- Minimum compensation should be in proportion to, or at least not exceed, the fare paid.
- Fixed compensation levels should be based on the length of the delay, as opposed to distance. Compensation on the basis of flight distance can be more complex for both passengers and airlines and can result in unequal treatment of passengers who experience similar inconvenience.
- Compensation should take into account the amount of advance notice provided by the airline.
- Compensation should be paid based on claims submitted to the airline by passengers. A requirement to compensate proactively would be difficult and burdensome to administer, given the number of passengers whose cases would each have to be validated and processed individually, taking into account different compensation preferences. In addition, airlines do not necessarily

receive all passenger contact information, especially when bookings are made through third parties.

Airlines also want the flexibility to offer compensation forms other than cash or equivalents, stating that:

- Airlines do not keep large amounts of cash on hand at airports, for security reasons.
- The ability to offer other forms of compensation (e.g., travel vouchers, seat upgrades and points towards loyalty programs) allows them to tailor compensation to the passengers' needs, potentially creating a compensation package of greater overall value to them.

Airlines raise concerns that establishing minimum compensation levels will result in the development of an unregulated industry of "claim firms" that file claims on behalf of passengers. This is viewed as an undesirable situation in which passengers could be taken advantage of and would not receive the full amount of the compensation to which they are entitled.

Denied Boarding

LEGISLATIVE MANDATE

As with flight delays and cancellations, the CTA is mandated to make regulations setting out the airline's minimum obligations with respect to denied boarding, including:

- The minimum standards of treatment of passengers that the airline is required to meet and the minimum compensation the airline is required to pay for inconvenience when the delay, cancellation or denial of boarding is within the airline's control;
- The minimum standards of treatment of passengers that the airline is required to meet when the delay, cancellation or denial of boarding is within the airline's control, but is required for safety purposes, including in situations of mechanical malfunctions;
- The airline's obligation to ensure that passengers complete their itinerary when the delay, cancellation or denial of boarding is due to situations outside the airline's control, such as natural phenomena and security events; and
- The airline's obligation to provide timely information and assistance to passengers.

EU AND US RULES

In the EU, passengers who are denied boarding against their will (for reasons other than health, safety, security or inadequate travel documentation) are entitled to the same standards of treatment (including reimbursement or re-routing) and compensation as for a cancelled or delayed flight, which were outlined in the previous section.

The US has established specific compensation requirements for situations of denied boarding due to overbooking only.

Domestic - Denied Boarding Compensation (DBC)

Length of Delay	Compensation
1 to 2 hour arrival delay	200% of one-way fare (but no more than $675)
Over 2 hour arrival delay	400% of one-way fare (but no more than $1,350)

International - Denied Boarding Compensation (DBC)

Length of Delay	Compensation
1 to 4 hour arrival delay	200% of one-way fare (but no more than $675)
Over 4 hour arrival delay	400% of one-way fare (but no more than $1,350)

Denied boarding compensation must be provided to the passenger immediately, or, if this is not possible due to travel arrangements, within 24 hours of the incident.

PUBLIC VIEWS

Travellers say airlines should be discouraged from overbooking, as it is an operational practice that maximizes revenues at the passenger's expense. They generally believe that compensation should be high enough to deter this practice and should also reflect the duration of the passenger's delay. Notably, survey respondents suggested compensation amounts should be higher than those for other delays (suggestions ranged from $0 to $16,000). Some individuals suggested alignment with US rules.

CONSUMER ADVOCATE VIEWS

Consumer advocates recommend using the EU definition of denied boarding—a passenger who presented themselves on time for the flight but is not permitted to board, excluding reasonable grounds for refusal to transport (e.g., health, safety and security reasons).

Consumer advocates say volunteers should be sought before a passenger is involuntarily denied boarding, as this process gives passengers autonomy. They also believe that:

- Airlines should be able to use incentives other than cash to seek volunteers, but should always be required to inform passengers of minimum compensation amounts for involuntary denied boarding.
- Certain travellers should be exempted from involuntary denied boarding, including: unaccompanied minors, families with children and passengers with disabilities.

In cases where someone is moved to a later flight against their will, consumer advocates are of the view that:

- Minimum compensation levels should be high enough to act as a disincentive and reflect the overall delay that a passenger experiences.
- Airlines should provide additional assistance (e.g., through a dedicated phone line) to affected passengers.

AIR INDUSTRY VIEWS

Industry notes that there are a number of potential reasons a passenger may be denied boarding, some of which are within their control, but many of which are not:

- Overbooking is an industry practice designed to ensure aircraft are full, to maximize flight revenue and enable fares to be set at lower levels than they otherwise would be. Most airlines indicate that involuntary denied boarding as result of overbooking is a relatively rare occurrence.
- An airline may replace an aircraft with a smaller one (downgrading) in the event of a mechanical malfunction where an equivalent replacement aircraft is unavailable.
- Particularly for smaller aircraft, weight and balance requirements and fueling considerations may mean that passengers must be denied boarding, for safety reasons.
- Some airlines, particularly those serving northern and remote communities, may deny boarding to accommodate medical travel (e.g., medevac services).

Airlines agree that seeking volunteers is the preferred method of addressing these situations. In order to most effectively secure volunteers, airlines should be free to negotiate with the passenger. Some airlines indicate that compensation amounts should not be punitive and that high minimum compensation levels for those moved to other flights without their agreement may disincentivize passengers from volunteering to fly later.

Airlines believe that the standards of treatment for flight delays and cancellations should apply to passengers who have been denied boarding. In addition, they generally agree that certain groups of passengers should be exempted from being denied boarding. Suggestions include families travelling with children, the elderly, individuals with disabilities, unaccompanied minors, and those travelling due to death or illness in the family.

They underscore that refusal to transport (e.g., for not having proper documentation or posing health or security risks) does not constitute denied boarding and that those who are refused transport should not receive the minimum standards of treatment or compensation.

Lost or Damaged Baggage

LEGISLATIVE MANDATE

The CTA is mandated to make regulations "prescribing the minimum compensation for lost or damaged baggage that the airline is required to pay".

MONTREAL CONVENTION PROVISIONS

The Montreal Convention applies to international travel. It provides, amongst other things, that an airline can be held liable under certain conditions for damage sustained in the case of destruction or loss of, or of damage to, baggage. It can also be held liable for damages occasioned by the delay of a baggage. The Montreal Convention sets the maximum liability for damages for lost, damaged or delayed baggage at 1,131 Special Drawing Rights (approximately CAN$2100).

EU AND US RULES

The EU and US, like Canada, have ratified the Montreal Convention for international air travel. The US domestic regime prohibits airlines from setting a maximum compensation limit below US$3,500 per passenger. Neither jurisdiction sets minimum compensation levels.

PUBLIC VIEWS

Members of the public generally agree that compensation for lost or damaged baggage should reflect the losses incurred. They also feel that it is important to be reimbursed for any fees paid for the transportation of the baggage in question.

CONSUMER ADVOCATE VIEWS

Consumer advocates underscore the exclusivity of the Montreal Convention in dealing with lost, damaged and delayed baggage for international flights. Many support aligning Canada's domestic regime with the Montreal Convention or the United States.

The definition of "lost baggage", they say, should be broad enough to capture temporarily lost/delayed baggage and permanently lost baggage.

Some advocates argue that there should be a minimum fee for lost and damaged baggage, in addition to liability for damage, in order to incent airlines to better handle baggage. Suggested approaches vary:

- flat rate per bag (proposals ranged from $150 to $500);
- compensation per day of baggage loss;
- refund of baggage fees.

Consumer advocates indicate that any requirements for the passenger to provide proof of damage or loss should not be onerous and that the burden of proof should be on the airline to show that damage was the result of a baggage defect. They suggest that documentation of damage to baggage could include photos, receipts or a sworn affidavit. A physical inspection should not be required.

AIR INDUSTRY VIEWS

Industry generally believes that this is not an area that requires regulation, emphasizing the exclusivity of the Montreal Convention for international travel. They also note that airlines are already investing in technologies, such as RFID tags, in order to better track baggage and that prescribed minimums for lost or damaged baggage would be an unnecessarily punitive measure.

Airlines also voice concern that setting minimum levels of compensation for baggage loss or damage could incentivize fraudulent claims. They suggest that:

- Precision would be required regarding what constitutes damaged baggage.

- Passengers who submit claims for lost or damaged baggage should be required to prove damages to their baggage as well be required to submit receipts and documentation in order to receive compensation.

Tarmac Delays

LEGISLATIVE MANDATE

The CTA is mandated to make regulations "respecting the airline's obligations in the case of tarmac delays over three hours, including the obligation to provide timely information and assistance to passengers, as well as the minimum standards of treatment of passengers that the airline is required to meet".

EU AND US RULES

The EU's passenger protection regime does not currently include any obligations related to tarmac delays. However, proposed regulatory amendments could require that passengers receive water and access to lavatories after one hour and that adequate heating and cooling be provided in the passenger cabin. In addition, passengers could be allowed to disembark after a delay of five hours.

The US rules require airlines to adopt and adhere to tarmac delay contingency plans. In addition, airlines must not permit an international flight to remain on the tarmac at a US airport for more than four hours, or a domestic flight for more than three hours, without allowing passengers to disembark (subject to safety and security issues or direction from air traffic control).

During a tarmac delay, passengers must be given an update on the situation every 30 minutes, including reasons for the delay, if known, and be notified of the opportunity to disembark from an aircraft that is at the gate or another disembarkation area. Finally, the airline must provide adequate food and water, ensure that lavatories are working and, if necessary, provide medical attention during long tarmac delays.

PUBLIC VIEWS

The public feels strongly that lengthy tarmac delays are a highly uncomfortable situation for passengers, which should be discouraged. Most feel that 3 hours is too long for a passenger to spend in an aircraft on the tarmac, particularly without basic necessities. Some indicate that:

- Standards of treatment and disembarkation rules should apply after 1 hour to 90 minutes.

- The length of a tarmac delay should be calculated based on the time that passengers are on the tarmac but unable to leave the aircraft.
- Tarmac delays are particularly difficult situations for persons with disabilities and certain types of medical conditions.

In terms of standards of treatment, the vast majority of survey respondents find all forms of possible assistance (i.e., disembarkation, water, food, and access to lavatories, medical attention, proper ventilation, heating and cooling and methods of communication) to be very important when delayed on a tarmac.

Travellers particularly wish to receive regular communication and status updates when confined to the aircraft. Some suggest that updates should be provided to passengers every 15 to 30 minutes or as soon as new information is available.

CONSUMER ADVOCATE VIEWS

Generally, consumer advocates agree that three hours is too long for a passenger to be confined on the tarmac, particularly without basic necessities like food, water, and access to lavatories, ventilation, and heating and cooling.

Recommendations as to when a tarmac delay begins vary and include:

- Time the boarding doors have closed;
- Advertised departure time; and
- When boarding has been completed.

Many suggest that minimum standards of treatment should be available earlier than three hours into a tarmac delay (suggestions ranged from one hour to 90 minutes), and that this should include:

- Water, food, and access to lavatories, medical attention (if necessary), proper ventilation, heating and cooling and communication methods.
- Disembarkation at the next safe opportunity, if necessities cannot be provided.
- Regular updates every 15 minutes to 30 minutes.

While consumer advocates agree that airlines should be required to disembark an aircraft after a certain length of tarmac delay, recommendations vary as to when disembarkation should begin:

- No later than 90 minutes
- No later than three hours

- After three hours for domestic flights and after four hours for international flights (in alignment with U.S. disembarkation rule).

One consumer advocacy organization recommends that airlines be required to file a tarmac delay contingency plan with the CTA and that this plan should include provision of basic necessities at all times.

AIR INDUSTRY VIEWS

Airlines stress that tarmac delays are actively avoided, as these are costly situations that are uncomfortable to both passengers and crew. They indicate that it is in all parties' best interests for a boarded flight to take off as close to the scheduled time as possible.

Airlines also underscore that lengthy tarmac delays are rare and that most tarmac delays are caused by factors outside of an airline's control, particularly:

- Weather and wind conditions preventing an aircraft from leaving from or arriving on the tarmac.
- Air traffic control (ATC), which can command aircraft to stay on the tarmac in order to manage air traffic and congestion.
- Lack of gate and customs availability upon arrival, which can force an aircraft to wait on the tarmac before disembarking.

It is generally agreed that passengers should be informed of a tarmac delay as soon as possible and regular updates should be provided. Information to be provided could include the reason for delay, expected length of delay, and estimated time to destination, when this information is available.

Most airlines believe the calculation of a tarmac delay should be based on the time passengers are on the tarmac but unable to disembark the aircraft and that the minimum standards of treatment provided to passengers during lengthy tarmac delays should include water, food, functional lavatories, proper ventilation, and heating and cooling. However, some airlines highlighted conditions that would make compliance with these requirements difficult, including systems malfunctions, weather conditions and the reality that small aircraft carry less food and water and, in some cases, have no lavatories.

Airlines generally advise against setting too short or strict a window before disembarkation is required. They state that:

- Pilots have very little control over whether an aircraft can return to the gate. Gate availability (as well as customs availability in some cases) may mean that an aircraft cannot be accommodated.
- In the event departure is imminent, it would be beneficial for both the passengers and the airline if the pilot could exercise discretion and wait to take off, rather than return to the gate.
- Disembarkation would likely cause the passenger further inconvenience and delay, as gate priorities would have to be rescheduled and the disembarked flight could be cancelled.
- Airlines may choose to cancel certain flights in advance and rebook passengers, rather than run the risk of experiencing a tarmac delay. Many airlines and US stakeholders attribute a significant increase in flight cancellations in the US to the implementation of a strict disembarkation rule for tarmac delays.

Seating of Children under the Age of 14 Years

LEGISLATIVE MANDATE

The CTA is mandated to make regulations "respecting the airline's obligation to facilitate the assignment of seats to children under the age of 14 years in close proximity to a parent, guardian or tutor at no additional cost and to make the airline's terms and conditions and practices in this respect readily available to passengers".

EU AND US RULES

Neither jurisdiction has established rules related to the seating of children.

PUBLIC VIEWS

Members of the public think airlines should be required to have clear guidelines for travelling with infants and/or young children and that there should be a requirement to seat families together at no additional charge, instead of relying on "best efforts". In order to facilitate this, some believe that airlines should proactively inquire whether passengers are children.

In terms of proximity, members of the public feel that it is particularly important to seat young children directly next to their parent or guardian:

- A strong majority of survey respondents felt that children 5 years old and younger should be seated directly adjacent to their parent or guardian.
- A weaker majority of survey respondents believe that children from age 6 to 11 should also be seated directly adjacent to their parent or guardian.

- Survey responses regarding seating proximity for children 12 to 14 years ranged from adjacent seating to seating within three rows of their parent or guardian.

CONSUMER ADVOCATE VIEWS

Many consumer advocates agree that airlines should seat children in the seat adjacent to their parent or guardian at no extra charge. A suggestion was also made that, in the case of operational challenges, a child should be separated from their parent or guardian by no more than a row.

Consumer advocates generally believe that seating should be facilitated at the time of booking and some say that where this is not possible, parents or guardians should be able to call the airline to make arrangements in advance.

It is generally agreed that airlines should provide simple, clear and concise information with respect to the seating of children that is readily available on their websites, and at check-in counters, kiosks and the gate.

AIR INDUSTRY VIEWS

Many airlines indicate that they already make best efforts to seat children near their parent or guardian (either in advance or at the airport), as this is in everyone's best interest. Some members of the industry are of the view that this is not an area in which government regulation is needed. Concerns regarding regulating this area, include the following:

- Priority seating of children is a complex process that is dependent on timing of bookings, whether child passengers have been identified in booking, differing seat selection processes of airlines, configuration and load factor of the aircraft, preferred seat selection of other passengers, and the number of families booked.
- Many bilateral air agreements between states (e.g., the Canada-US Open Skies Agreement) protect airlines' pricing freedom and requiring that children be seated in proximity to parents at no charge could be interpreted as interfering with this right.
- The legislative language treating individuals aged 14 and under as children, conflicts with International Civil Aviation Organization standards, which consider individuals aged 12 and older as adults for air travel.
- This requirement creates potential for abuse (e.g., family members booking in different classes and expecting upgrades free of charge in order to be seated together).
- The reservation process would be facilitated if airlines were able to collect birthdates of children travelling.

A range of views are expressed by airlines regarding the appropriate seating proximity for child passengers:

- Some indicate that age should be the factor used to determine seating proximity; others recommended general parameters applicable to all child passengers to avoid unnecessary complexity.
- The definition of "close proximity" should allow airlines flexibility to balance families' needs with the rights of other passengers, and commercial and operational factors.
- This should include seats immediately adjacent, in the row in front or behind and across the nearest aisle.

Transportation of Musical Instruments

LEGISLATIVE MANDATE

The CTA is mandated to make regulations "requiring the airline to establish terms and conditions of carriage with regard to the transportation of musical instruments".

EU AND US RULES

The EU has not established regulations in this area.

The US has established a rule requiring airlines to:

- allow passengers to stow a small musical instrument in the cabin overhead bin or a closet, or under the seats, in accordance with Federal Aviation Administration (FAA) requirements, provided that space is available;
- carry large musical instruments (within weight restrictions) in the cabin if the passenger has purchased an additional seat to accommodate the instrument; and
- accept musical instruments in the cargo compartment as checked baggage if those instruments comply with the FAA's size and weight limitations.

PUBLIC AND CONSUMER ADVOCATE VIEWS

Some members of the public and consumer organizations voiced great concern regarding the handling and stowing of musical instruments at airports and on aircraft.

It is generally believed that the transportation of musical instruments should be predictable and reasonable across all airlines and all airports and that airlines should be required to provide passengers with clear guidelines and compensation policies for damaged instruments.

Many say that there should be a standard policy established across all airlines for the transportation of musical instruments, in alignment with the rules established in the US.

AIR INDUSTRY VIEWS

Generally, airlines support providing clear policies on the transportation of musical instruments. However, they feel that competition in this area generates the best results and that any further regulation in this area—for example, prescribing policies or service standards—is unnecessary.

Scope of New Regulations

LEGISLATIVE MANDATE

The CTA is mandated to apply the regulations "*in relation to flights to, from and within Canada, including connecting flights*".

However, this new mandate could be informed by a long-standing provision of the Act, which states that the CTA's air-related regulations "*may be conditional or unconditional or qualified or unqualified and may be general or restricted to a specific area, person or thing or group or class of person or things.*" This means that specific requirements established in the air passenger protection regulations could be applied to some rather than all airlines.

EU AND US RULES

Some passenger protection requirements in the EU and US are differentiated by airline type or apply only to certain classes of airlines. For example, the obligation in the US to have a tarmac delay contingency plan only exists if an airline is "*a certificated airline, a commuter airline, or a foreign airline operating to, from or within the United States, conducting scheduled passenger service or public charter service with at least one aircraft having a designed seating capacity of 30 or more seats.*"

PUBLIC AND CONSUMER ADVOCATE VIEWS

In order to ensure a consistent and transparent approach and uniform rights for travellers, it is felt that the new regime should apply to all publicly available flights to, from and within Canada. It was also noted that this should include connecting flights, scheduled, non-scheduled and charter flights, and flights under any ownership/partnership arrangements.

AIR INDUSTRY VIEWS

Airlines object to the application of the new regime to flights originating outside of Canada. They state that:

- Most regimes in the world apply only to flights departing that jurisdiction.
- Extraterritorial application would create confusion between regimes, duplication and conflicts with local laws.

Most airlines believe that there should be no exemptions to the regime based on airline or aircraft type, in order to ensure a level playing field and a consistent regime. However, airlines acknowledge that this approach may involve greater financial impacts and/or operational difficulties for smaller airlines, ultra low cost airlines and airlines serving remote areas. Some airlines advocated for exemptions to regulations where undue harm to a airline can be proved.

Airlines serving northern and remote areas have advocated for exemptions from some provisions in order to maintain their viability and to take into account their unique operating conditions:

- Significant and unpredictable weather events.
- Locations with limited amenities (e.g., hotels and restaurants).
- Infrastructure limitations at remote airports (e.g., snow clearing services, fuel availability, weather reporting systems, mechanical assistance).
- Flights with multiple legs (serving a number of communities) and related rolling delays.
- Lower flight frequency and fewer alternative airline options for rebooking.
- Public service role in communities (often the sole transportation option, provider of services such medevac and transportation of necessities).

Application of New Regulations when Different Airlines are Involved

LEGISLATIVE MANDATE

The CTA is mandated to make regulations outlining airline obligations with respect to specific issues "in relation to flights to, from and within Canada, including connecting flights".

Increasingly, airlines partner and cooperate through arrangements like code-sharing, interlining and joint ventures[2]. These arrangements allow one airline to sell an itinerary that includes flights with multiple airlines. These arrangements raise questions as to which airline—the marketing airline, the operating airline, or some combination of the two—should have obligations towards passengers if there are issues with flights.

MONTREAL CONVENTION PROVISIONS

Article 36 of the Montreal Convention addresses liability when carriage is performed by various successive air carriers. Each carrier that accepts passengers, baggage or cargo is subject to the rules set out in the Convention. For passenger compensation (for delay, injury, death), action can only be taken against the carrier that performed the carriage during which the incident occurred, unless liability has expressly been assumed by the first carrier. The baggage and cargo provisions make the first and last carriers, as well as the one performing the carriage when the destruction, loss, damage or delay took place, jointly and severally liable to the passenger or to the consignor or consignee.

EU AND US RULES

In the EU, when there is more than one airline involved in providing the air service, it is the operating airline that is responsible for fulfilling any obligations with respect to the consumer protection regulations.

In the US, the requirements vary. For example, in the case of tarmac delays, if there is a partnership between an airline or multiple airlines, the marketing and the operating airlines are responsible in an enforcement context for complying with the tarmac delay contingency plan, including disembarking passengers on international flights. In the case of lost and damaged baggage, it is the marketing airline that must address any issues.

PUBLIC AND CONSUMER ADVOCATE VIEWS

Many recommend that, when a flight involves an arrangement between multiple airlines, both the operating and contracting airline should have responsibility toward the passenger. They indicate that:

---

[2] A **code-share** refers to an arrangement where a licensed airline provides services by selling transportation in its name on flights operated by another airline.
Interline travel is transportation using two or more airlines operating under their own terms and conditions. For convenience of the passenger and the participating airlines, all segments of the interline travel appear on the same ticket and the fare for the journey is paid to the ticketing airline and later distributed between the airlines providing the transportation.
Joint ventures are formal arrangements between two or more airlines providing air services.

- Joint liability would ensure that passengers can seek redress quickly and easily from either party.
- This reflects the fact that the marketing and operating airlines are accountable for different components of the regime.

AIR INDUSTRY VIEWS

Many airlines agree that the regulations should apply to operating airlines only, in order to:

- reflect current practices, in which the operating airline is responsible for managing operations on the day of travel;
- reduce confusion as to where claims should be filed; and
- limit the possibility of a passenger making claims to both airlines and receiving twice the compensation to which they are eligible.

However, other airlines indicate that the marketing airline, as the party that contracts for carriage, should be held liable for passenger claims. Marketing airlines are also generally responsible for communication with passengers prior to the day of travel.

Complaints and Enforcement

LEGISLATIVE MANDATE

When the new air passenger protection regulations come into effect, airlines will be required to follow them. Passengers who believe that an airline has not followed its obligations could first raise the issue with the airline and will have the option of filing a complaint with the CTA.

In addition, CTA enforcement officers will take steps to confirm and ensure that airlines comply with the new regulations. It is possible to designate some or all of the provisions of the air passenger protection regulations as subject to Administrative Monetary Penalties (AMPs), which are an efficient means of dealing with non-compliance.

EU AND US RULES

The US can issue fines for certain air passenger rules, including those dealing with tarmac delays. The EU rules do not prescribe monetary penalties in relation to its air travel regulations.

PUBLIC AND CONSUMER ADVOCATE VIEWS

Travellers want a complaint process that is simple, quick, enforceable, consistent and made clear to passengers.

- There should be a universal complaint form across all airlines and the CTA.
- Airlines should be required to inform passengers that a complaint can be made to the CTA, if the airline has not resolved the situation to a passenger's satisfaction.

Many believe that there should be punitive action (e.g., fines) taken against airlines if they do not comply with the new regulations.

- In particular, the public wishes to see deterrents for misreporting causes of flight disruptions and providing inaccurate information to passengers.
- Consumer advocates suggest that such monetary penalties be clearly defined and that the CTA outline what measures will lead to an AMP.

AIR INDUSTRY VIEWS

Industry members indicate that complaints are generally resolved quickly and to the satisfaction of the passengers. Airlines feel that passengers should approach them with a complaint before involving the CTA.

Tariff Topics, Availability and Filing

LEGISLATIVE MANDATE

Tariffs are documents regulated by the CTA that set out an airline's fares, rates, charges and terms and conditions of carriage. They are the contracts between an airline and its passengers. The requirements set out in the new air passenger protection regulations will be deemed to form part of an airline's tariff, to the extent that the tariff does not provide better terms and conditions.

The CTA has the authority under the Act to establish what information should be contained in a airline's tariff. The current *Air Transportation Regulations* require that an airline's tariff include terms and conditions stating the airline's policies on certain matters, including failure to operate on the service or schedule, ticket reservation, cancellation, or confirmation requirements, refusal to transport, limitations of liability and refunds.

Currently, an airline's tariff must be publicly available for inspection anywhere an airline sells its transportation services, including its business offices. In addition, international airlines have to file their tariffs with the CTA and keep the tariffs on file up-to-date with

respect to prices (fares, rates or charges), subject to the terms of any applicable air transport agreement.

EU AND US RULES

The EU has no specific tariff filing requirements. However, the EU requires airlines to communicate to the general public the conditions applicable to any fare and air rate offered or published in any form, including on the Internet. In the US, airlines are not required to file their domestic passenger fares and rules with the US Department of Transportation. In many cases, the Department has exempted US and foreign carriers from the statutory requirement to file international passenger fares. Airlines are required, for international travel, to file tariffs containing some "general rules" such as conditions of carriage, baggage allowances and liability. The US also has website posting requirements.

PUBLIC AND CONSUMER ADVOCATE VIEWS

Some individuals suggest that airline tariffs should provide clear, concise and simple information. However, consumer advocates suggest that while tariffs should include the air passenger protection provisions, they should not be relied upon as a passenger's primary source of information regarding their rights and terms and conditions of carriage. Instead, it is felt that the air passenger protection regime should ensure that simplified information be made available to passengers separately from the tariff.

Some individuals are of the view that policies on baggage, seat selection and transportation of pets should be addressed within the tariff. Some suggested topics, such as passenger comfort, language of service, aircraft configuration and safety issues, fall outside the scope of tariff requirements.

AIR INDUSTRY VIEWS

Many airlines express that tariffs are complex legal documents that are difficult for passengers to navigate; however, it is generally agreed that:

- Passengers should receive key information on an airline's terms and conditions of carriage in plain language separately from an airline's tariff (e.g. on the airlines website, via email).

Some airlines disagree with the tariff approach altogether, stating that it does not add value, align with current industry practices, or keep up with modern developments.

- If the tariff approach is maintained, filing should be done electronically.
- If Canadian airlines are required to file a tariff for international service, the same requirement should apply to international airlines.

Industry members generally find that the topics are currently covered in the tariffs are sufficient.

Next steps

The CTA appreciates the participation of the public, consumer advocacy groups and the air industry throughout the consultation process. All the input received will be given careful consideration as the CTA develops air passenger protection regulations. Draft regulations will require approval by Agency Members and the Governor in Council, and will be posted for a public comment period in the Canada Gazette.

Once the regulations are in place, the CTA will issue guidance and tools for passengers and airlines, to help ensure that this new regime is implemented smoothly and that passengers are aware of their rights and the recourse available to them.